

## SECTION 7: ENFORCEMENT

### A. ENFORCEMENT

1. It shall be unlawful, and considered a public nuisance per se, to make use of any lot, parcel, or piece of property in such a way as to conflict with the provisions of this Ordinance. Likewise, it shall be in violation of this Zoning Ordinance to erect, construct, reconstruct, alter or use a building or any other structure which does not conform to the criteria set forth in this Ordinance. The Board of Supervisors, Director of Community Development, County Attorney, County Sheriff, County Clerk, and all officials charged with the issuance of licenses or permits shall enforce the provisions of this Ordinance. Any permit, certificate, or license issued in conflict with the provisions of this Ordinance shall be void. To provide for the enforcement of this Zoning Ordinance, the County may withhold all building permits and zoning permits for properties on which a use of the property, building or any other structure exists which does not meet the standards of this Ordinance.
2. A zoning enforcement officer shall investigate, and report on all notices of zoning violations. The Board of Supervisors shall appoint a hearing officer to hear and determine zoning violations. Individuals determined by the hearing officer to be violating any provision of this Ordinance shall be responsible of a zoning violation which is punishable by a civil sanction not to exceed the equivalent of a maximum fine of a Class 2 misdemeanor for each violation pursuant to ARS § 11-808.

### B. HEARING OFFICER

A hearing officer may be an employee of the County and shall be appointed by, and serve at the discretion of the Board of Supervisors. A review of decisions of the hearing officer by the Board of Supervisors shall be available to any party to the hearing. Any appeal of the Board of Supervisors' decision shall be filed in Superior Court.

### C. ZONING ENFORCEMENT OFFICER

1. The zoning enforcement officer shall review all reported violations of this Ordinance. Upon receiving a report of a zoning violation, the zoning enforcement officer shall inspect the site of the alleged violation. During an inspection the enforcement officer shall take careful and comprehensive notes as to condition and existing uses of the subject property, location, property owner and address, and specific section(s) of the County Zoning Ordinance corresponding to the alleged violation.
2. Should the zoning enforcement officer determine that a violation is occurring on

the subject property, he/she shall serve notice to the property owner/alleged violator of the violation. The notice of violation shall cite the nature of the violation, the section of the County Zoning Ordinance violated, information of possible penalties if violation has not ceased, steps necessary to bring the subject property into compliance with the zoning regulations, and a reasonable time frame in which all necessary actions should be completed to correct the noticed violation.

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3. Reinspection shall occur after the given deadline. If the violation still exists at this time, a second notice shall be given to the property owner/alleged violator. The second notice of violation shall set a final deadline for compliance not to exceed two (2) weeks. If the zoning enforcement officer is convinced an attempt is being made in the correction of the violation, an extension not to exceed thirty (30) days, may be granted.

If all reasonable attempts by staff fail to resolve the violation within the time specified in second notice, or by the deadline of any extension, a citation shall be issued for each specific section of the Zoning Ordinance which has been violated. The citation shall be personally served at least seventeen (17) days prior to the hearing on the alleged violator by the zoning enforcement officer with reasonable effort. If the zoning enforcement officer is unable to personally serve the citation, the citation may be served in the same manner prescribed for alternative methods of service by the Arizona Rules of Civil Procedure. Violations for which citations are issued shall be scheduled for a hearing before the Coconino County hearing officer. If a citation is served upon an alleged violator other than by personal service, i.e. Certified Mail with return receipt, the hearing shall be set for a date no sooner than thirty (30) days from the date indicated on the Certified Mail receipt. A notification of the specific time and date by which the alleged violator must appear at the hearing office to submit a plea shall be enclosed with the citation.

#### **D. HEARING OFFICER PROCEDURE**

##### **1. COMMENCEMENT**

- a. Every action or proceeding brought before the hearing officer for a violation of the Coconino County Zoning Ordinance shall be commenced by the filing of a zoning violation citation by the zoning enforcement officer. No notice shall be deemed insufficient for failure to contain a definite statement of the essential facts constituting the specific violation, if the notice contains either a written description or reference to the applicable section of the Zoning Ordinance

pertaining to the violation.

- b. Pursuant to Section 7.C of this Ordinance the alleged violator or his attorney shall appear at the hearing office by the date and time specified in the notice accompanying the zoning citation, and may admit responsibility by appearing in person or by mailing to the hearing office an appearance form provided by the hearing officer or in lieu of such form, a short statement signed by the alleged violator or his attorney admitting the allegations of the notice. Once a formal admission of responsibility is received by the hearing office, the hearing officer shall set a time and place for the determination of the penalty for the violation. At the hearing officer's meeting, both the alleged violator and zoning enforcement officer shall be given an opportunity to state their position on the amount of the penalty to be imposed by the hearing officer. Without an extension, which may be granted by the hearing officer in extraordinary circumstances, the alleged violator shall correct the zoning violation within thirty (30) days from the date of the hearing officer proceedings.

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2. COUNSEL

- a. Pursuant to Section 7.C of this Ordinance, the alleged violator or his attorney shall appear at the hearing office by the date specified in the notice accompanying the zoning citation and may deny responsibility by appearing in person or by mailing to the hearing officer an appearance form provided by the hearing officer or in lieu of such form, a denial signed by the alleged violator or his attorney. Once a formal denial is received by the hearing officer, the hearing officer shall schedule the matter for hearing and notify the alleged violator or his attorney of the date, time and place for the hearing. Upon appearance, it shall be the responsibility of the alleged violator or his attorney to notify the hearing officer of an incorrect address or any different address than what is set forth on the zoning citation.
- b. After the submittal of formal denial, the hearing officer shall promptly notify the alleged violator of his right to be represented by counsel. The alleged violator must notify the hearing officer in writing at least ten (10) days prior to the hearing date of his choice to be represented by counsel. The hearing officer may move to continue a hearing if the alleged violator does not make

notification of his decision to secure counsel within the aforementioned time frame.

- c. If the alleged violator fails to appear by the date and time specified in the notice accompanying the zoning citation, the allegations filed against the alleged violator shall be deemed admitted, and the hearing officer shall enter judgment for the County and impose a penalty subject to Section 7.4 of this Ordinance.
- d. The County need not be represented by counsel at the hearing officer's meeting. Should the County elect to secure counsel, the County must, in writing, notify the hearing officer and the alleged violator at least ten (10) days prior to the hearing of the County's decision to be represented by counsel.

Within ten (10) days prior to the hearing, both parties shall produce for inspection by the opposing party a list of witnesses and prepared exhibits, prepared exhibits to be on file at the hearing office. Failure to comply with this provision may result, in the hearing officer's discretion, in the granting of a continuance to permit such inspection or denial of the admission of the evidence.

### 3. HEARING OFFICER MEETING

- a. The order of the hearing officer proceeding shall be as follows:
  - 1. The hearing officer shall call the case and briefly describe the procedures to be followed.
  - 2. County's statement.
  - 3. Testimony of the County's witnesses.
  - 4. Respondent's statement.
  - 5. Testimony of the respondent's witnesses.

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- 6. Testimony of other attendees at the discretion of the Hearing Officer.
- 7. Respondent's rebuttal.
- 8. County rebuttal.

9. Cross examination of witnesses shall be strictly limited to subjects or evidence elicited during direct testimony.
  10. Closing statement of the parties or their counsel.
  11. Ruling by the hearing officer. At the conclusion of the hearing, the hearing officer shall determine whether a zoning violation exists and, if a violation is found to exist may impose civil penalties in accordance with Section 7.4.a of this Ordinance. A ruling shall include the findings, conclusion and opinion of the hearing officer.
- b. At the discretion of the hearing officer, a hearing may be continued for a period not exceeding sixty (60) days if it appears that the interests of justice so require. The hearing officer shall not continue a hearing without first giving notice to both parties. The hearing officer shall notify both parties in writing of the new hearing date.
  - c. The hearing officer may question witnesses or representatives of either party.
  - d. The Arizona Rules of evidence shall not apply before a hearing officer. Any evidence offered may be admitted subject to a determination by the hearing officer that the offered evidence is relevant.
  - e. Audio tape recordings of the hearing shall be made and kept on record at the hearing office for a period of one (1) year. In addition, a record of the proceedings may be made by a court reporter if requested by the alleged violator at the alleged violator's expense.
  - f. If the alleged violator fails to appear at the time set for the hearing, the alleged violator shall be found to be in default, the statement of responsibility shall be deemed admitted, and the hearing officer shall enter finding for the County and impose civil sanction, and report such judgement to the zoning enforcement officer.
  - g. If no witness for the County, excluding alleged violator appears at the set time for the hearing, the hearing officer shall dismiss the citation unless the hearing office, for good cause shown, continues the hearing to another date.
  - h. At anytime, the hearing officer may set aside a finding entered upon a failure to appear if it is deemed by the hearing officer that the alleged violator was not served a citation, or for any other reason where necessary to prevent an injustice.

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4. FINDING OF RESPONSIBILITY / CIVIL SANCTIONS

- a. If the alleged violator, after the hearing, is found responsible for the zoning violation, the hearing officer shall enter finding for the County and impose a civil sanction not to exceed the equivalent of a maximum fine for a Class 2 Misdemeanor for each violation. Civil sanctions shall consist of a fine not to exceed seven hundred and fifty dollars (\$750) per violation, per day.
- b. The hearing officer shall levy an initial fine reflecting a penalty for the existing violation situation. The hearing officer has the option of dismissing the initial fine should extenuating circumstances exist.
- c. A non-compliance and daily penalty schedule shall be outlined in the judgement to accrue should the violation not be abated by the compliance date specified by the hearing officer.
- d. The hearing officer may attach a penalty for “recurrence” to a parcel for a maximum of two (2) years from the hearing date. Said penalty shall be levied if a violation of the same section of the ordinance, as addressed in the hearing officer proceedings, occurs within the specified time period. A recall notice shall be served and the Respondent shall be scheduled to appear at the earliest possible hearing date.
- e. The following guidelines shall be utilized when assessing penalties:

	USE TYPE
	Agricultural/
Commercial/	
	Residential
Industrial	
MINIMUM PENALTY	
Initial	\$ 100
	\$ 300
Non-compliance	\$ 200

	\$ 600	
Daily		\$ 20
	\$ 60	
Recurrence		\$ 300
	\$ 500	
MAXIMUM Cumulative Amount of Daily Penalty		\$1500
	\$3000	

NOTE: A maximum penalty of \$750 per day per violation is allowed in accordance with a Class 2 Misdemeanor (ARS § 11-808)

- f. Should the daily penalty balance exceed \$1500 for agricultural/residential use or \$3000 for commercial/industrial use the matter shall be forwarded to the County Attorney's Office for further legal action.

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- g. The alleged violator, if found responsible for the zoning violation and penalized with a civil sanction, shall not be relieved from the responsibility of correcting any prohibited condition. Unless appealed to the Board of Supervisors within seven (7) days from the date of the hearing, the defendant shall correct the zoning violation within thirty (30) days from the date of the hearing.

#### **E. APPEAL TO THE BOARD OF SUPERVISORS**

1. Any party may appeal to the Board of Supervisors the final finding of the hearing officer. A written notice of appeal shall be filed with the hearing officer within seven (7) days after the hearing officer's finding.
2. The notice of appeal shall identify the finding appealed from. It shall be signed by the appellant or the appellant's counsel, and shall contain the names, addresses, and telephone numbers of all parties and their attorneys. When a party appeals, the hearing officer shall send a copy of the notice of appeal to the other party or his attorney.

3. Appeals shall be limited to the record of the proceeding before the hearing officer, and no new evidence may be introduced. The record of the proceedings shall include all materials in the hearing officer's file, all evidence admitted at the hearing, and the official record as per Section 7.3.E of this Ordinance.
4. Upon receiving the notice of appeal the hearing officer shall within thirty (30) days prepare and transmit the record and schedule the appeal before the Board of Supervisors.
5. The parties may stipulate that the appeal may be heard on less than a complete record or upon stipulated facts. The designation of the stipulated record shall be in writing, filed with the hearing officer within fifteen (15) days after the notice of appeal.
6. Upon sending the record to the Board of Supervisors, the hearing officer shall notify both parties that they have five (5) days from the date of the letter to submit a memorandum stating the parties' position to be submitted at the Board of Supervisors' hearing.

The memorandum shall be submitted to the Clerk of the Board and shall not exceed five (5) pages in length.

7. A notice of appeal before the Board of Supervisors shall be posted at least twenty four (24) hours prior to the hearing. The hearing officer shall mail a notice of the hearing to both parties not less than five (5) days prior to the meeting.
8. The Chairman of the Board of Supervisors shall preside at the appeal and shall decide on all questions pertaining to procedure. Final decisions on the merits of the case shall be made upon motion and majority vote of the quorum.
9. At the Board of Supervisors' hearing, arguments on appeal shall be limited to five (5) minutes for each party unless extended by the Chairman of the Board of Supervisors.

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10. After consideration of the merits of an appeal, and finding of an abuse of discretion by the hearing officer, the Board of Supervisors may increase, decrease, or modify any sanction imposed by the hearing officer and may:
  - a) Affirm the action of the hearing officer;



- b) Affirm in part and reverse in part and, if necessary, remand for further proceedings; or,
- c) Reverse the action of the hearing officer and, if necessary, remand for further proceedings.

F. RECALL

1. Recall of a case may occur when the conditions and/or compliance time frame have not been met by the Respondent. The hearing officer case is considered to be an open case until complete compliance has been reached as outlined in the hearing officer judgment.
2. In the event that there is a penalty for recurrence, a recall notice may be served in accordance with the procedures indicated in Section 7.F-3, only if the term of the recurrence penalty has not expired.
3. Service of the recall notice shall be completed in person, by Certified Mail, or alternate methods of service as prescribed in the Arizona Rules of Civil Procedure not less than 14 days prior to the hearing date.

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